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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,039	06/01/2001	Wayne D. Jung	JJL10B	5400

7590 08/28/2003

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EXAMINER

KIM, PAUL L

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

09/872,039

Applicant(s)

JUNG ET AL.

Examiner

Paul L Kim

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. In view of the appeal brief filed on April 18, 2003, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 3, 6, 7, 40, and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Tonzuka et al.

With reference to claims 2, 3, 6, 7, and 40, Smith teaches a method of spectral analysis (col. 4, lines 3-4) comprising the steps of: providing a first system (fig. 1, part 28), generating commands for the first system from a second location by a network

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connection (figs. 1, part 36 & col. 4, lines 42-46), transmitting and receiving commands to the first system by an electronic connection (fig. 1, part 36 & col. 4, lines 14-15), and operating the spectral measurement system in accordance with the operational commands (fig. 1). Smith, however, does not teach operating the first system from a remote location. Tonozuka et al teaches a process monitoring system that has a central monitoring device that controls from a remote location, by network, a plurality of monitoring devices (col. 2, lines 35-45). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Smith, so that spectral measurements can be controlled from a remote location, as taught by Tonozuka et al, in order to be able to control a plurality of measurement devices from a single location.

With reference to claims 45-48, Smith teaches a method of spectral analysis for measuring color values comprising the steps of: providing a first system (fig. 1, part 28), making spectral measurements with the first system (figs. 2, part 28), transmitting spectral data produced by the first system to a second system and receiving spectral data at the second system (figs. 1, part 38 & col. 4, lines 42-46), and providing articles of color characteristics that correspond to spectral measurements made by the first system to the second system (col. 4, lines 35-43). Smith, however, does not teach operating the first system from a remote location. Tonozuka et al teaches a process monitoring system that has a host central monitoring device that controls, from a remote location, a plurality of monitoring devices (col. 2, lines 35-45). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Smith, so that spectral measurements can be controlled from a remote location, as taught by

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Tonozuka et al, in order to be able to control a plurality of measurement devices from a single location.

4. Claims 4, 5, 8, 28, 29, and 37, are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith and Tonozuka et al in view of Fawcett.

With reference to claims 4, 5, and 8, Smith teaches commands from one system being transmitted to the another system, but does not teach commands being sent by a web page via dial-in Internet connection. Fawcett teaches one system communicating with another system by a web page via dial-in connection (fig. 1, part 18 and fig. 2). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Smith, so that commands are sent by Internet, as taught by Fawcett, in order to be able to control a device from a remote distance using a widely used medium.

With reference to claims 28, 29, and 37, Smith does not teach a software upgrade including a new release of an application program or calibration data. Fawcett teaches a method of identifying and obtaining computer software over a network that includes a new release of an application program (abstract) and calibration data (col. 2, lines 17-21). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Smith, so that software upgrades can be made over a network, as taught by Fawcett, in order to provide up-to-date versions of software releases from one central location to save time and expense.

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5. Claims 9-12, 17-19, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Bianchini et al.

Smith et al does not teach a method of diagnosing a first system that initiates testing periodically and displays an Internet message on the first system. Bianchini et al teaches a distributive fault tolerance system that diagnosis a first system over a network periodically based on time (col. 17, lines 13-20 & fig. 10), stores diagnostic data (fig. 1b, part 16), and generates a message on the first system electronically (col. 17, lines 18-20). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Smith, so that a test mode is performed on the first system periodically, as taught by Bianchini et al, in order to make sure the spectral measurement systems are in good working condition.

6. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith and Tonozyuka et al in view of Wilson et al.

Smith and Tonozyuka et al does not teach the system statistically processing operation history data. Wilson et al teaches a diagnostics system that uses statistical analysis to process data indicative of the history of operation of the first system (col. 2, lines 16-18). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Smith and Tonozyuka et al, so that data history is statistically processed, as taught by Wilson et al, in order to analyze a trend of sensor operation.

7. Claims 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith and Tonozuka et al in view of Jung et al.

With reference to claim 41, Smith does not teach the first system carrying out a calibration process with respect to relative movement of probe with respect to a calibration standard. Jung et al teaches a color measuring system that carries out a calibration process based on a position of the probe (col. 16, lines 1-7). It would have been obvious to one of ordinary skill in the art, at the time of invention, to modify Smith, so that calibration process could take place based on relative movement of probe, as taught by Jung et al, in order to make accurate correct color measurements.

With reference to claim 42, Smith does not teach the probe's sensors detecting the physical position of the probe. Jung et al teaches the probe position being sensed (col. 10, lines 31-38). It would have been obvious to one of ordinary skill in the art, at the time of invention, to modify Smith, so that the position of the probe can be sensed, as taught by Jung et al, in order to make reliable color measurements.

With reference to claim 43, Smith does not teach the first system making spectral measurements based on calibration and positioning data from the sensors during the calibration process. Jung et al teaches measurements based on calibration and position data of sensors (col. 10, lines 35-38). It would have been obvious to one of ordinary skill in the art, at the time of invention, to modify Smith, so that measurements are based on calibration and position data of sensors, as taught by Jung et al, in order to make reliable color measurements.

With reference to claim 44, Smith teaches the system at the second location remotely controlling and monitoring data from the first system (fig. 1, part 38).

***Allowable Subject Matter***

8. Claims 15, 16, 20- 25, 30-36, 38, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-48 have been considered but are moot in view of the new ground(s) of rejection. With regard to remarks on page 8, lines 8-19, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham*, 2 USPQ F.2d 1647 (1987).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Collins et al teaches a system for preventing the use of unauthorized color formulation software.



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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 703-305-7468.

The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-4440 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK  
June 29, 2003

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
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